IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 36 of 2002
(Old No. 1441/1992)

Commissioner of Sales Tax,
U.P. Lucknow. ……Applicant/Revisionist

Vs.

Kisan Sahkari Chini Mill Ltd.
Nadehi Jaspur (Kashipur) …….Opposite Party

Shri Sayeed Nadem, learned Standing Counsel for the revisionist..
None present on behalf of the opposite party.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel. None appeared for respondent even after service. The revision has been moved under Section 11 (1) of U.P. Sales Tax Act, 1948, and is directed against the judgment and order dated 29.05.1992, passed by Sales Tax Tribunal, Bareilly. This revision was filed way back in the year 1992 and is received by transfer from Allahabad High Court, under Section 35 of U.P. Reorganisation Act, 2000.

The only question of law, raised in the revision is whether the price of gunny bags were liable to be taxed by adding the same in the turnover of the dealer with the price of the sugar?

The assessment pertains to the year 1987-88, for which year the tax on sugar was exempted under Section 4 of U.P. Sales tax Act, 1948. The sugar is always sold in gunny bags as it is packed in gunny bags before it is stored for sale. The assessee is the manufacturer of sugar and was not supposed to sell it in loose without any packing.

Merely on the basis of the fact that the sugar was sold in gunny bags by the manufacturer, it cannot be said that the assessee has sold the gunny bags. There is nothing on the record to establish that there was any direct agreement between the assessee and the

purchaser of sugar for sale of gunny bags for the specific amount as consideration. Since no price was paid for the gunny bags, there cannot be said to be sale of gunny bags, as it does not come within the definition of sale, in view of Section 2 (h) of the U.P. Sales Tax Act, 1948.

In view of the above discussions, the revision has no force and the same is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 29.07.2005
Sweta